

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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MR. HARRY BERROA,

Plaintiff,

v.

DONNA ZICKEFOOSE, et al.,

Defendants.

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Civ. No. 13-4789 (NLH)

OPINION and ORDER

APPEARANCES:

Harry Berroa, #62268-066  
FCI Fort Dix  
P.O. Box 2000  
Fort Dix, NJ 08640  
Plaintiff Pro se

Plaintiff Harry Berroa, an inmate currently confined at the Federal Correctional Institution in Fort Dix, New Jersey, brings this civil rights action pursuant to 42 U.S.C. § 1983 and submits an application to proceed in forma pauperis. The in forma pauperis application, however, was submitted on forms intended for use in a habeas petition and listed the fee as \$5.00.

On May 19, 2015, this Court issued a Notice and Order (ECF No. 3) informing Plaintiff of the accurate filing fee amount for an action filed pursuant to 42 U.S.C. § 1983. Plaintiff was directed to file a written response informing the Court whether he wished to proceed with his case or withdraw his Complaint.

On June 4, 2015, the Court received a letter from Plaintiff (ECF No. 4) indicating that he wishes to proceed and that he understands that he will be charged a \$350 filing fee. Plaintiff also indicated that he no longer wished to amend his Complaint.

The Court finds that Plaintiff has submitted a complete application to proceed in forma pauperis and grants leave to proceed without prepayment of fees. See 28 U.S.C. § 1915. As noted in the Court's May 19, 2015 Order, this case is subject to sua sponte screening by the Court, and the Complaint will be screened in due course. See 28 U.S.C. §§ 1915(e)(2)(B); see also 28 U.S.C. § 1915A; 42 U.S.C. § 1997e.

IT IS therefore on this 8TH day of June, 2015,

ORDERED that Plaintiff's application to proceed in forma pauperis is GRANTED; and it is further

ORDERED that the Clerk of the Court shall file the Complaint; and it is further

ORDERED that SUMMONS SHALL NOT ISSUE, at this time, as the Court's sua sponte screening has not yet been completed; and it is further

ORDERED that that the time to serve process under FED. R. CIV. P. 4(m) is hereby extended to the date 120 days after the Court permits the Complaint to proceed; and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(b) and for purposes of account deduction only, the Clerk shall serve a copy of this Order by regular mail upon the United States Attorney's Office and the warden of the Federal Correctional Institution in Fort Dix; and it is further

ORDERED that Plaintiff is assessed a filing fee of \$350.00 and shall pay the entire filing fee in the manner set forth in this Order pursuant to 28 U.S.C. § 1915(b)(1) and (2), regardless of the outcome of the litigation, meaning that if the Court dismisses the case as a result of its sua sponte screening, or Plaintiff's case is otherwise administratively terminated or closed, § 1915 does not suspend installment payments of the filing fee or permit refund to the prisoner of the filing fee, or any part of it, that has already been paid; and it is further

ORDERED that pursuant to Siluk v. Merwin, 783 F.3d 421 (3d Cir. 2015), as amended (Apr. 21, 2015), as amended (Apr. 28, 2015), if Plaintiff owes fees for more than one court case, whether to a district or appellate court, under the Prison Litigation Reform Act (PLRA) provision governing the mandatory recoupment of filing fees, Plaintiff's monthly income is subject to a single, monthly 20% deduction, "and the cases and/or appeals that an inmate has filed [shall] be paid off sequentially," Siluk, 783 F.3d at 426 (emphasis in original);

i.e., the first-filed case shall be paid off in full, then the second-filed case, etc., until all fees have been paid in full; and it is further

ORDERED that, with respect to this case, when Plaintiff's fees become ripe for payment in accordance with Siluk, in each month that the amount in Plaintiff's account exceeds \$10.00, until the \$350.00 filing fee is paid, the agency having custody of Plaintiff shall assess, deduct from Plaintiff's account, and forward to the Clerk of the Court payment equal to 20% of the preceding month's income credited to Plaintiff's account, pursuant to 28 U.S.C. § 1915(b)(2) and each payment shall reference the civil docket number of this action.

\_\_\_\_s/ Noel L. Hillman\_\_\_\_  
NOEL L. HILLMAN  
United States District Judge

At Camden, New Jersey